

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36132

STATE OF IDAHO,)	2009 Unpublished Opinion No. 612
)	
Plaintiff-Respondent,)	Filed: September 18, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
BRANDON LEIGH DAY,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

Order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth Ann Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Brandon Leigh Day pled guilty to criminal possession of a financial transaction card. Idaho Code §§ 18-3125(1), 18-3128(3). The district court sentenced Day to a unified sentence of three years with two years determinate. The court suspended the sentence and placed Day on probation. His probation was subsequently revoked and the suspended sentence ordered into execution. Day filed an Idaho Criminal Rule 35 motion, which the district court denied. Day appeals asserting that the district court abused its discretion by denying his I.C.R. 35 motion.

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d

23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Upon review of the record, including any new information submitted with Day's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Day's Rule 35 motion is affirmed.